IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 152 OF 2004

The Shipping Corporation of India Ltd. ...Applicant

Versus

Machado Brothers ...Respondents

Mr. Chirag S. Balsara, instructed by M/s. Bhatt & Saldanha for the applicant.
None for respondents.

CORAM: **DALVEER BHANDARI, C.J.**
DATE: **NOVEMBER 05, 2004**.

P.C.

In this application, notice was issued to the respondent on 13th September, 2004 and again on 15th October, 2004, this Court issued fresh notice to the respondent. The learned Counsel appearing on behalf of the applicant has placed acknowledgment on record.

2. Article 21 of the Agency agreement reads as under.

> "If any dispute or difference shall arise between the parties hereto touching these presents or any claim or thing herein contained or the construction hereof or as to any matter in any way connected with or arising out of these presents of the operation thereof or the rights, duties or liabilities of either party in connection with these presents, then and in every such cases, unless

> the parties concur in the appointment of a single arbitrator, the matter in dispute or difference shall be referred to two arbitrators, one to be appointed by each party to the difference in accordance with and in all respects to confirm to the provisions in that behalf contained in the Arbitration Act, 1940 or any subsisting statutory modification or re-enactment thereof for the time being in force and the award of such Arbitrator shall be binding on the parties hereto. The venue of such arbitration shall be Bombay and Courts in Bombay alone will have jurisdiction in the matter.

2. The learned counsel for the applicant has also pointed out a registered letter dated 23rd April, 2004 (at Exhibit-C) which has been sent by the applicant's advocate to the respondent in which it is mentioned that disputes have arisen between his client and the respondent and his clients are entitled to refer the said dispute to arbitration under Article 41 of the Agency Agreement. It is further incorporated in the letter that the applicant has appointed the Hon'ble Mr.Justice S.P. Bharucha, retired Chief Justice of India, as his Arbitrator. The respondents have not exercised the option of appointing Arbitrator on their behalf. The respondents are not present despite service.

3. In this view of the matter, I deem it appropriate to request the Hon'ble Mr. Justice M. H. Kania, retired Chief Justice of India, to act as an Arbitrator on behalf of the respondent. Both the learned Arbitrators

are requested to appoint a third Arbitrator and proceed with the Arbitration in accordance with law.

4. This application is accordingly disposed of.

CHIEF JUSTICE